# United States Department of Labor
# Employees' Compensation Appeals Board

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| **S.C., Appellant** | ) | |
| **and** | ) | **Docket No. 18-1242** |
| | ) | **Issued: March 13, 2019** |
| **U.S. POSTAL SERVICE, POST OFFICE, Steubenville, OH, Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.*, for the appellant[1]
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On June 4, 2018 appellant, through counsel, filed a timely appeal from an April 20, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.; see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

## ***ISSUE***

The issue is whether appellant has met her burden of proof to establish left wrist carpal tunnel syndrome causally related to the accepted factors of her federal employment.

## ***FACTUAL HISTORY***

On October 19, 2016 appellant, then a 53-year-old sales and service associate, filed an occupational disease claim (Form CA-2) alleging that, as of August 17, 2016, she developed severe pain and numbness in her left hand and wrist due to repetitive work tasks she had performed for 30 years.

In a narrative statement dated October 19, 2016, appellant related that, during the prior several months, she experienced severe pain and numbness in her left hand, and that she had recently developed pain from her thumb and fingers up to her wrist. She indicated that she would wake up with pain and she had trouble driving because her hand would go numb. Appellant explained that she had worked for the employing establishment for 30 years as a clerk, holding, sorting, pulling, and pushing mail, and that the performance of these repetitive tasks caused her to develop the left hand and wrist symptoms. She noted that she had no prior problems with her hands. Appellant also indicated that her right hand was also becoming numb.

In a separate statement dated October 19, 2016, K.T., a supervisor, noted that appellant worked for the employing establishment for over 30 years. She indicated that appellant was currently a sales and services associate, but she was also a city scheme qualified employee who threw letters and lockbox mail on a daily basis. K.T. also noted that her duties included holding, sorting, pulling, and pushing mail, as well as scanning parcels for delivery. She related that appellant had indicated that she had pain in her left wrist.

In a development letter dated October 27, 2016, OWCP advised appellant of the factual and medical deficiencies of her claim. It provided a questionnaire for her completion to establish the employment factors alleged to have caused or contributed to her medical condition and requested a medical report from her attending physician explaining how and why her federal work activities caused, contributed to, or aggravated her medical condition. OWCP afforded appellant 30 days to submit the necessary evidence.

In a November 2, 2016 response, appellant again explained that she worked for the employing establishment for the last 30 years, pulling, sorting, grabbing, and lifting mail on a daily basis. She noted that she would use one hand while using the other to put mail piece by piece into a shelf hole. Appellant explained that her hand would squeeze the mail to ensure that she would not drop it. Additionally, she used her hand to grip cages and hold the bar to pull in cages.

OWCP received an October 26, 2016 attending physician's report (Form CA-20) from a physician assistant.

By decision dated January 19, 2017, OWCP found that the employment factors occurred as alleged, but denied appellant's claim as the medical component of fact of injury had not been established. It explained that the medical evidence submitted was insufficient to establish a

diagnosed medical condition in connection with the accepted employment factors. OWCP concluded, therefore, that appellant had not met the requirements to establish that she sustained an injury as defined by FECA.

On February 8, 2017 appellant requested reconsideration.

OWCP received a copy of the October 26, 2016 Form CA-20, countersigned by Dr. Jeffrey P. Hein, a Board-certified family practitioner. Dr. Hein diagnosed carpal tunnel syndrome and checked the box marked "yes" indicating that the diagnosed conditions were caused or aggravated by an employment activity. He noted "overuse."

By decision dated May 9, 2017, OWCP modified the January 12, 2017 decision from a denial based on the element of fact of injury, to a denial based on causal relationship. It explained that the medical evidence submitted did not establish which hand was affected by the carpal tunnel syndrome diagnosis, and did not establish that the diagnosis was caused by appellant's employment duties.

On June 26, 2017 appellant requested reconsideration.

In a May 4, 2017 report, Dr. Tibor Ketzan, Board-certified in physical medicine and rehabilitation, noted appellant's referral for an electrodiagnostic study of the upper extremities to rule out carpal tunnel syndrome. He indicated that she used her hands extensively at work handling heavy packages and mail. Dr. Ketzan explained that during the past few years, she had experienced pain, numbness, and paresthesias in both hands, with increasing left hand symptoms since last August. He examined appellant and advised that she had an abnormal study, which revealed bilateral carpal tunnel syndrome, with the left greater than the right. Dr. Ketzan indicated that it appeared moderately severe on the left and mild on the right.

OWCP also received a May 31, 2017 treatment note from a physician assistant.

By decision dated September 7, 2017, OWCP denied modification of the prior decision.

On September 28, 2017 appellant requested reconsideration.

In a September 15, 2017 report, Dr. Hein noted that appellant had been diagnosed with moderate-to-severe carpal tunnel syndrome. He opined: "[t]his injury is often associated with one's occupation and caused by repetitive occupation and was a result of repetitive motions."

By decision dated December 26, 2017, OWCP denied modification of the September 7 2017 decision.

On January 22, 2018 appellant requested reconsideration. In support thereof, she submitted a January 4, 2018 report, wherein Dr. Hein noted that she had been diagnosed with carpal tunnel syndrome as confirmed by electromyography scan nerve conduction velocity study. Dr. Hein advised that the condition was moderately severe on the left and mild on the right. He related that appellant worked at the employing establishment and her job consisted of grasping and tossing "ladders" all day as well as lifting bins of letters to sort. Dr. Hein explained that she had performed these duties for many years and opined "the repetitive stress is felt to be the cause of her symptoms.

He noted that appellant's claim was denied and she was in limbo. Dr. Hein explained that she needed to undergo carpal tunnel surgery, but she could not get the time off she needed. He also noted that appellant had complaints of ongoing numbness of the left third finger and that her grasp was getting weaker and she was dropping items. Dr. Hein explained that appellant's job consisted primarily of repetitive motion that included grasping and lifting and throwing. He indicated that she had no other explanation for her carpal tunnel. Dr. Hein opined, "in my opinion it's clearly related to her job."

By decision dated April 20, 2018, OWCP denied modification of the December 26, 2017 decision.

## ***LEGAL PRECEDENT***

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,[3] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[4] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[5]

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.[6]

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.[7] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of

[3] *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[4] *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[5] *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[6] *C.D.*, Docket No. 17-2011 (issued November 6, 2018); *Jacquelyn L. Oliver*, 48 ECAB 232, 235-36 (1996).

[7] *M.B.*, Docket No. 17-1999 (issued November 13, 2018).

reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[8]

## ***ANALYSIS***

The Board finds that appellant has not met her burden of proof to establish left wrist carpal tunnel syndrome causally related to her accepted employment factors.

In an October 26, 2016 report, Dr. Hein diagnosed carpal tunnel syndrome and checked the box marked "yes" indicating that the diagnosed conditions were caused or aggravated by employment activity. He noted "overuse." The Board has long held that the checking of a box marked "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.[9]

In a September 15, 2017 report, Dr. Hein diagnosed moderate-to-severe carpal tunnel syndrome. He opined: "[t]his injury is often associated with one's occupation and caused by repetitive occupation and was a result of repetitive motions." While he provided an affirmative opinion on causal relationship, Dr. Hein's conclusory opinion is insufficiently rationalized. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.[10] This report is therefore insufficient to establish appellant's claim.

In a January 4, 2018 report, Dr. Hein related that appellant's job consisted of grasping and tossing "ladders" all day as well as lifting bins of letters to sort. He explained that she did this for many years and opined "the repetitive stress is felt to be the cause of her symptoms. Dr. Hein further explained that appellant's job consisted primarily of repetitive motion that included grasping and lifting and throwing. He indicated that she had no other explanation for her carpal tunnel. Dr. Hein's reference to "tossing ladders" appears to be a typographic error. However, he still failed to provide a rationalized opinion explaining how the accepted factors of appellant's federal employment, such as pulling, sorting, grabbing and lifting mail on a daily basis at work, could have caused or aggravated her carpal tunnel syndrome. As previously noted, the medical evidence must address the mechanism of injury to establish causal relationship.[11] The Board has explained that generalized statements do not establish causal relationship because they merely repeat appellant's allegations and are unsupported by adequate medical rationale explaining how the actual physical activity physiologically caused or aggravated the diagnosed condition.[12] Thus, the Board finds that Dr. Hein's reports are insufficiently rationalized to establish that appellant's

[8] *M.L.*, Docket No. 18-1605 (issued February 26, 2019).

[9] *See Barbara J. Williams*, 40 ECAB 649, 656 (1989).

[10] *See Y.D.*, Docket No. 16-1896 (issued February 10, 2017).

[11] *Id.*

[12] *B.H.*, Docket No. 18-1219 (issued January 25, 2019); *see also K.W.*, Docket No. 10-0098 (issued September 10, 2010).

carpal tunnel syndrome was caused or aggravated by the accepted factors of her federal employment.

In a May 4, 2017 report, Dr. Ketzan indicated that appellant used her hands extensively at work handling heavy packages and mail. He examined her and advised that she had an abnormal study, which revealed bilateral carpal tunnel syndrome, with the left greater than the right. While Dr. Ketzan provided a diagnosis, he did not offer an opinion on causal relationship. Medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.[13]

OWCP also received a May 31, 2017 treatment note from a physician assistant. This report does not constitute competent medical evidence because a physician assistant is not a "physician" as defined under FECA.[14] Under FECA the term physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by the applicable state law.[15] Consequently, the medical findings and/or opinions of a physician assistant will not suffice for purposes of establishing entitlement to compensation benefits.[13]

As there is no rationalized medical evidence explaining how appellant's employment duties caused or aggravated her carpal tunnel syndrome, appellant has not met her burden of proof to establish that her left carpal tunnel syndrome was causally related to factors of her federal employment.

On appeal, counsel argues that the evidence was overly "nitpicked" and interpreted against appellant. However, for the above reasons, the Board finds that the medical evidence of record is insufficient to establish her claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

## ***CONCLUSION***

The Board finds that appellant has not met her burden of proof to establish left wrist carpal tunnel syndrome causally related to the accepted factors of her federal employment.

[13] *See L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[14] *K.W.*, 59 ECAB 271, 279 (2007); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006). A report from a physician assistant or certified nurse practitioner will be considered medical evidence if countersigned by a qualified physician. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013).

[15] 5 U.S.C. § 8101(2).

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the April 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board